HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Revision No. 111 of 2002
(Old No. 1265 of 1996)

Rajendra Das
S/o Sri Devendra Chandra Das
R/o Adarsh Indra Colony,
Rudrapur
P.S. Rudrapur
District Udham Singh Nagar .....Revisionist

Versus

State .....Respondent

Hon'ble J.C.S.Rawat, J.

Heard Smt. Pushpa Joshi learned counsel for the revisionist and Sri Nandan Arya learned A.G.A. and perused the record.

This criminal revision has been field against the order dated 03.9.1996 passed by the learned IInd Additional Sessions Judge, Nainital in S.T. No.290/1996.

In this revision a very short question is involved as to whether the revisionist was juvenile within the meaning of the Juvenile Justice Act, 1986 as applicable on the date of occurrence. A criminal misc. application was filed before the Allahabad High Court in which the court below was directed to determine the age of the revisionist in view of the provisions of section 8 and 24 of the Juvenile Justice Act. In pursuance of the said order the IInd Addl. Sessions Judge held an inquiry and recorded the statements of Rajendra Das (revisionist), Aarti – mother of the revisionist and Dr. M.S. Pangati-CMO. Dr. M. S. Pangati – CMO had conducted the medical examination of the revisionist and found that the revisionist was about 18 years old at the time of medical examination i.e. on 13.5.1996.

The revisionist has field a certificate issued by the Principal, Guru Nanak Inter-College, Nanakmata, Nainital in which it has been mentioned that the

revisionist-Rajendra Das was the student of VI class in the year 1989-90 and his date of birth has been shown in the said certificate as 05.12.1979. Meaning thereby, the revisionist was about 15 years 4 months at the time of the incident and the incident took place in March 1995. The learned IInd Addl. Sessions Judge has not relied upon the said certificate and he disbelieved the school certificate on the ground that the mother of the revisionist had stated that his son-revisionist had completed the age of 16 years. The IIn Addl. Sessions Judge had disbelieved the school certificate on the ground that the revisionist was found by the CMO as of 18 years old on the date of medical examination.

The learned counsel for the revisionist has further submitted that the aforesaid certificate cannot be discarded because the prosecution has not rebutted the said certificate by any cogent evidence. It was further submitted that witness-Arti is rustic and she is not able to tell as to when her son was born and she did not know the exact age of his son. The mother of the revisionist has categorically stated in her evidence that the revisionist was 16 years of age on the date of recording the evidence. Her evidence was recorded on 26.8.1996 whereas the occurrence took place on 17.3.1995.

The learned counsel for the revisionist has submitted that the courts below has given the due weightage to the medical examination and according to the Medical Jurisprudence there may be variation of three years on either side. Meaning thereby, it cannot be ruled out that the revisionist was fifteen years old at the time of the incident.

I have gone through the entire record and perused the finding recorded by the learned IInd Addl. Sessions

Judge. On re-appreciation of the certificate issued by the school, I am of view that the said certificate is reliable because the respondent had not rebutted the contention of the said certificate by cogent evidence. Arti-mother of the revisionist had also state in his evidence that the revisionist was 16 years of age at the time of recording of her evidence i.e. on 26.8.1996 while the incident took place in the month of March, 1995. The evidence of Arti further corroborated the date of birth mentioned in the school certificate. The evidence of CMO clearly reveals that the age of the revisionist was found 18 years on the date of medical examination i.e. 10.5.1996. According to Medical Jurisprudence there may be variation three years on either side. Thus, it cannot be ruled out that the revisionist was 15 years on the date of medical examination. The age determined by the doctor cannot be the conclusion proof of that fact.

It has been held in **Bhoop Ram Vs. State of U.P. SCC 1989 (3) p/1:-**

> *"6. The learned counsel for the appellant argued that the Chief Medical Officer's certificate and the Sessions Judge's report regarding the age of the appellant are based only on their respective opinions whereas the school certificate produce by the appellant contains definite information regarding the date of birth of the appellant and hence the school certificate should prevail over the certificate of the doctor and the report of the Sessions Judge especially in the absence of any material to raise doubts about the truth of the entries in the certificate. The learned counsel further stated that the reason given by the Sessions Judge for rejecting the school certificate is*

merely based on his assumption that parents very often understate the age of their children at the time of their admission in schools in order to secure benefits for the children in their future years. On the other hand, the learned counsel for the State laid stress upon the report of the Chief Medical Officer since it was based upon the fusion of bones etc., and argued that the appellant should have been about 18 years of age on the date of the occurrence and hence the appellant is not entitled to invoke the provisions of the U.P. Children Act.

In view of the foregoing discussion, I am of the view that the revisionist could not complete the age of sixteen years on the date of incident and he should have been given the benefit of juvenile justice (care and Protection of Children) Act 2000. Therefore, the learned IInd Addl. Sessions Judge has erred in holding that the revisionist was not juvenile at the time of incident. Therefore, the order dated 3.9.1996 passed by the learned IInd Addl. Sessions Judge, Nainital is liable to be set-aside.

The revision is allowed. Order dated 3.9.1996 passed by the learned IInd Addl. Sessions Judge, Nainital is set-aside.

Let the record of the trial court be remitted back to the trial court immediately for necessary action.

(J.C.S.Rawat, J.)

Dated 03.11.2004

LSR